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STRENGTHENING EXISTING INTERNATIONAL COOPERATION IN CRIME PREVENTION AND CRIMINAL JUSTICE, INCLUDING TECHNICAL COOPERATION IN DEVELOPING COUNTRIES, WITH SPECIAL EMPHASIS ON COMBATING ORGANIZED CRIME

Note by the Secretary-General

Addendum

Report of the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime, Smolenice, 27-31 May 1991

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I. RECOMMENDATIONS

1. The following recommendations were drawn up by the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime for the attention of the intergovernmental working group on the creation of an effective international crime and justice programme and the Committee on Crime Prevention and Control, at its twelfth session.* They are drawn from the discussions of the substantive agenda items, as well as from the papers presented by experts and the United Nations or United-Nations-affiliated institutes for the prevention of crime and the treatment of offenders:

(1) The process of studying and combating transnational crime and crimes with transnational aspects should take into account a number of factors, such as the considerable changes in the political, economic and social situation in the world and the extensive development of international business activities, including the creation of common markets and other forms of integration. It should also take into account the vulnerability of national frontiers, the high level of modern communication, the expansion of the international banking system and resultant simplification of money transfer, the extensive use of computer technology, the universal spread of illegal business in arms and explosives, the growth in the number of enterprises producing and using radioactive and chemical substances and the extensive use of such substances, and the limited geographical reach of national laws and national law enforcement authorities, differences in legal systems, and the limited effect of international procedures for obtaining evidence, apprehension and extradition of offenders.

(2) In view of the political and economic changes taking place in many countries, including the newly emerging "market economies", new laws and regulations should be developed so as to be able to anticipate and respond to changing situations and emerging economic realities. Exchanges of information on, and experiences with, economic crime and its control by criminal sanctions should be intensified. Due consideration should be given to regulatory mechanisms as essential complements to penal sanctions.

(3) In view of the increasing seriousness and gravity of organized crime, terrorism and other transnational crimes, Governments should be encouraged to conclude bilateral and multilateral agreements to carry out or enhance the effectiveness of extradition proceedings and mutual assistance in criminal matters, using as a basis United Nations model treaties and other treaties and agreements concluded at the regional and international levels. The role of regional and subregional intergovernmental organizations in supporting the United Nations in this field would be essential. Appropriate coordination mechanisms should be established and maintained.

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*The Committee on Crime Prevention and Control was dissolved by the Economic and Social Council on 7 February 1992 (resolution 1992/1) upon the establishment by the Council of the Commission on Crime Prevention and Criminal Justice. The present report is therefore before the Commission at its first session.

(4) Countries should consider establishing a national organization with powers to plan and coordinate the domestic criminal justice and crime prevention programme. The composition of this organization should include representatives of the various relevant sectors of government and the community.

(5) Countries should agree to share information and intelligence on non-controversial matters. To facilitate such exchanges, countries should establish national databases with linkage to all other countries. A technical committee should be set up to overview these activities.

(6) Countries should study the practices on extradition prevailing in certain regional groups, for example the Council of Europe. This could help to eliminate the difficulties associated with the technical requirements that are the main obstacles to extradition being granted.

(7) National and international efforts to achieve more effective strategies to deal with transnational crime should focus on:

(a) Harmonization of legislation and avoidance of conflicts of jurisdiction that may result in serious transnational offenders escaping justice;

(b) Penalization of certain forms of behaviour to eliminate gaps in national legislation;

(c) Cooperation through extradition, mutual assistance, enforcement of foreign judgements, transfer of criminal proceedings, transfer of offenders, including designation of an appropriate coordinating authority to expedite the implementation of treaties;

(d) Integratation of the various modalities of international cooperation to provide better and more efficient results;

(e) Reassessment of traditional principles of international cooperation, such as reciprocity, double criminality, specialty, the political offence exception and the non-extradition of nationals and territoriality;

(f) A lessening of the divergence of national conceptions of criminal justice, including substantive law and procedural rules and practices, with due respect for human rights considerations;

(g) The sharing of law enforcement intelligence (information) and the increase of joint activities in inter-State law enforcement collaboration;

(h) The development of effective financial mechanisms to trace the proceeds of illicit activities;

(i) The development of subregional or regional "judicial spaces" with a view to exploring the possibilities for their expansion, in accordance with particular and specific emerging needs;

(j) The inclusion of international and transnational crimes in national legislation, in particular with a view to eliminating safe havens;

(k) Development of the means to prevent, detect, and prosecute abuses of power by public officials and other forms of corrupt behaviour;

(l) The development of education and training programmes in international criminal law at the level of legal education, as well as within public agencies;

(m) The development of specialized education and training of judges, prosecutors and law enforcement officials in the areas of transnational crime, money laundering and other economic offences, including corruption, and elaboration of the required training material;

(n) The development of regional centres to increase the availability of specialized library material, documents and research results, with the capacity to provide technical legal advice to countries of the region;

(o) Acceptance of the principle that all countries, regardless of how seriously they are affected by transnational crime, have to collaborate and share information on its nature and extent, to facilitate appropriate policy formulation and planning;

(p) The development of interfaces with existing international and regional networks such as the International Criminal Police Organization (ICPO/Interpol) and other international bodies;

(q) Strengthening of an awareness on the part of Governments and relevant national agencies of the important correlation between socio-economic development and crime control programmes, with appropriate budget and resource allocations, including international aid for crime prevention schemes.

(8) Efforts should be pursued to formulate effective strategies for dealing with environmental offences. An assessment of the administrative, civil and criminal laws enforced by different countries should be made in order to identify gaps and propose appropriate remedies. Adequate attention should be given not only to the sanctioning strategies but also to the prevention of environmental abuse and the protection of the environment.

(9) Efforts should be made to allow the widest possible distribution of information on stolen art objects so as to prevent their illegal sale, thereby effectively stemming the international traffic in movable cultural property.

(10) In order to benefit from both successes achieved and failures, an assessment should be made of the results of cooperation already undertaken to prevent use of the banking system and financial institutions for money laundering, including successful preventive measures. Initiatives such as the development by the Council of

Europe of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, which was opened for signature on 8 November 1990, should be encouraged and efforts should be pursued to develop a multilateral agreement with universal application. The model decree for confiscation is a very practical model, which could prove extremely useful in such an application (see annex I). A detailed analysis of its provisions is available from the Crime Prevention and Criminal Justice Branch.

(11) Efforts should be made to gather information on corruption and anti-corruption strategies, with a view to assisting Governments in combating corruption and in providing a basis for formulating more effective policies to deal with it. Emphasis should be placed on the formulation of curricula for anti-corruption training courses, benefiting, in particular, developing countries. In addition to research, training and technical assistance in the most advanced methods of corruption control through repression, equal attention should be paid to prevention and education. The efforts of independent commissions against corruption can be useful in devising controls in public administration and in increasing public intolerance for waste and corruption. In its resolution 7, 1/ the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders specifically requested the Department for Technical Co-operation and Development to provide assistance for such outreach, requested the Secretary-General to publish in all the official languages the manual on practical measures against corruption, which had already been prepared, and requested the Crime Prevention and Criminal Justice Branch to develop a draft international code of conduct for public officials for submission to the Ninth Congress.

(12) Recognizing that while bilateral and regional cooperation may provide mechanisms for specific arrangements to prevent or investigate certain types of transnational criminality, they cannot provide a comprehensive solution of matters of cooperation in combating serious forms of organized crime at the international level. Multilateral cooperation should be made more effective, through the United Nations, which has the general mandate and the international constituency necessary to provide countries with guidance and assistance in the prevention and control of transnational crime. This could be pursued in the context of a genuinely international crime and justice programme, which would be capable of responding to the challenges of such crime.

(13) United Nations surveys on crime trends should also include information on trends in transnational crime in order to permit an in-depth analysis of its scale, structure and dynamic, and of the extent of its material cost and potential social consequences. In the further development of the Global Crime and Criminal Justice Information Network, attention should be paid to the setting up of databases on transnational crime.

(14) The idea of establishing a world foundation on crime prevention and assistance to victims of transnational crime should be pursued. The proposed foundation could help to identify and mobilize financial resources in support of the implementation of international crime prevention and criminal justice programmes, raise

public awareness about crime trends and the rights of victims, develop innovative means of responding to technical assistance needs and provide financial support to victims.

(15) The United Nations crime prevention and criminal justice programme should aim at developing the new mechanisms, procedures, conventions and institutions necessary to combat crime with transnational aspects and dimensions and to assist Governments in reducing domestic crime. For example:

(a) This could, in particular, include assistance to countries in:

(i) Gathering information on, and analysing, the incidence of crime and the efficacy of the response to crime;

(ii) Preventing crime and helping victims of crime;

(iii) Enhancing the criminal justice process through improved methods for the investigation of crime and developing pre-trial, trial and appellate review procedures;

(iv) Improving the administration of sentences and the re-integration of offenders into society and the control of recidivism;

(b) On the international level, the mandates should include:

(i) The drafting of international conventions, declarations and recommendations pertaining to the definition of international offences;

(ii) The enhancement of existing cooperative mechanisms and the development of new ones, including such mechanisms as mutual assistance and extradition;

(iii) The organization of trainee programmes for developing countries;

(iv) The drafting of model penal provisions dealing with selected offences;

(c) The mandates should further include the development and encouragement of coordinated subregional, regional and international activities from the investigative to the adjudicative stages, including ascertainment of the practicality of establishing subregional and regional penal tribunals with transferred jurisdiction, in order to meet more effectively the problems of particularly severe domestic crime and of crime transcending national frontiers;

(d) Consideration should also be given to coordination by the United Nations of cooperative arrangements at the bilateral level, including the exchange of crime prevention and criminal justice personnel, such as police officers at different levels, who could in

this manner conduct comparative studies in the area of criminal investigations into drug-trafficking and other similar activities. In addition, criminal justice attachés at embassies and consulates could help each other to reach a better understanding of their countries' laws and court processes and procedures. This could be a very useful means of facilitating effective cooperation with respect to transnational crimes involving different countries;

(e) The United Nations Government-appointed national correspondents should become more operational. Ideally, the function should be carried out by an office or individual in an agency or institution with responsibilities in the countries' criminal justice systems; this would permit them to ensure that action was taken when necessary and to respond accurately and with authority to United Nations inquiries;

(f) Technical cooperation, particularly at the regional and subregional levels, should be intensified through the development of technical assistance projects benefiting developing countries. Special consideration should be given to the strengthening of the operational capacity of the crime prevention and criminal justice programme and its interregional advisory services, to ensure that the most recent developments in modern technology and expertise are placed at the disposal of all Member States. Efforts should also be made to create regional advisers on crime prevention and criminal justice to provide services to the respective regions, in close contact with the regional institutes for the prevention of crime and the treatment of offenders;

(g) The United Nations crime prevention and criminal justice programme of work should be coordinated with that of ICPO/Interpol and other relevant organizations.

II. ATTENDANCE AND ORGANIZATION OF WORK

A. Date and venue

2. The Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime was convened at Smolenice Castle, Bratislava, from 27 to 31 May 1991.

B. Attendance

3. The Meeting was attended by experts and observers representing all the regions of the world. For a list of participants, see annex II.

C. Opening of the Meeting

4. The Meeting was opened by the Chief of the Crime Prevention and Criminal Justice Branch of the United Nations Office at Vienna (Centre for Social Development and Humanitarian Affairs), who said that the task before the experts was to formulate concrete proposals on the implementation of the conclusions and recommendations of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, with particular emphasis on recommendations related to transnational crime.

5. Opening statements were made by Mr. Stefan Lastovka, President of the Police Force of the Slovak Republic, and by the Under-Secretary-General, Director-General of the United Nations Office at Vienna.

6. Mr. Lastovka welcomed the participants and said that the importance of the Meeting was reflected in the great interest of society in the issues to be covered, particularly in connection with the recent experiences of Czechoslovakia. Transnational crime, which until very recently had been virtually unknown, was becoming a problem for the countries of Eastern Europe. In particular, the incidence of drug trafficking and related terrorist activities, as well as money laundering, was increasing. One example was the growing use by drug-smugglers of the so-called "Balkan route", which was affecting more and more countries of the region, including Czechoslovakia.

7. Mr. Lastovka stated that new forms of crime, invariably involving transborder criminality, were threatening his country and referred to a recent study showing that the crime rate was expected to increase by approximately 300-350 per cent by 1996, compared with the crime rates recorded for the biennium 1988-1989. He called for increased and more effective regional, subregional and international cooperation in preventive measures and in legislation, justice administration and law enforcement know-how. Such cooperation should be based on the standards, norms and guidelines adopted by the United Nations which, together with the model treaties adopted by the General Assembly on the recommendation of the Eighth Congress in its resolutions 45/116, 45/117, 45/118 and 45/119, should form the basis for multilateral action against transnational crime while at the same time protecting human rights. Czechoslovakia was prepared to contribute as much as possible to such cooperation and had adopted legislation (article 375 of the Criminal Proceedings Act), which provided that all ratified treaties became domestic law ipso jure. Mr. Lastovka concluded by saying that the Meeting provided an excellent opportunity to establish cooperative arrangements with the rest of the world.

8. The Under-Secretary-General expressed her gratitude to the Government of Czechoslovakia and that of the Slovak Republic for their generosity in acting as hosts to the Meeting in the beautiful castle of Smolenice, noting that it was the first time that the Centre for Social Development and Humanitarian Affairs of the United Nations Office at Vienna had organized an international meeting in Czechoslovakia, taking advantage of President Havel's generous offer of conference facilities extended to the United Nations the previous year.

9. Transborder criminality was, in a sense, the price of increased freedom and technical progress in communication, travel and transportation. Countries that had recently opened their borders were in danger of becoming victims to the existing currents of transborder criminality. For that reason, the Meeting appeared well placed both in time and in geographical location. She stressed the need for close cooperation among and between countries, pointing out that it seemed to be the only way of adequately meeting the challenge posed by transnational crime, which was apparently impervious to the efforts of single countries to cope with it. The model treaties on extradition, mutual assistance and transfer of proceedings in criminal matters (see General Assembly resolutions 45/116, 45/117 and 45/118 respectively) could facilitate the efforts of countries to establish the needed cooperation on a bilateral basis. There was also an acute need for effective multilateral strategies, policies and arrangements to eliminate the discrepancies between national

jurisdictions, from which transborder criminals profited and which enabled them to pursue their illicit activities with impunity. Recent initiatives aimed at creating regional or international tribunals with jurisdiction over certain offences, such as those related to illicit drug trafficking, were promising steps in that direction. The recent "breakthrough" decision to establish a European court with jurisdiction over the planned European economic region was an important advance.

10. The experts had the task of making concrete recommendations on optimal forms of concerted action that would increase the rate of success in the struggle against the different forms of transnational criminality. It was not an easy one, particularly in view of the traditional concepts of national sovereignty. The effort, however, had to be made to adapt international legal institutions to the realities of the modern world, in order to cope with the fresh challenges that kept emerging. Human rights, the violation of which could not be defended on the basis of national sovereignty, were a case in point.

D. Election of officers

11. The following officers were elected by acclamation:

Chairman:	Dušan Čotić (Yugoslavia)
Vice-Chairmen:	Farouk Murad (Saudi Arabia)
	Frank Solomon (Trinidad and Tobago)
	Joyce Bamford-Addo (Ghana)*
Rapporteur:	Michael DeFeo (United States of America)

E. Adoption of the agenda

12. The following agenda was adopted:

1. Adoption of the agenda.

2. Review of the recommendations of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders with respect to enhanced international cooperation in combating transnational crime.

3. Practical cooperative strategies and policies at the subregional, regional and international levels.

4. Other modalities of international cooperation.

5. Conclusion and recommendations.

6. Adoption of the report.

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*Joyce Bamford-Addo (Ghana) was elected to one of the posts of Vice-Chairmen, representing the African region, but was unfortunately unable to attend.

III. REPORT OF THE DISCUSSIONS

13. The Chief of the Crime Prevention and Criminal Justice Branch made an introductory statement in which he provided background information on the Meeting and discusssed the documentation provided to the experts, which had been included in the programme budget for the biennium 1990-1991 to follow up the progress made in implementing the resolutions adopted by the Eighth Congress dealing with the various aspects of transnational crime.

A. Review of the recommendations of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders with respect to enhanced international cooperation in combating transnational crime

14. The progress made to date in implementing the actions of the Eighth Congress was catalogued. The resolutions recommended to the General Assembly had been adopted by the Assembly at its forty-fifth session; several of the participants had served as visiting experts at a seminar organized by the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders dealing with, inter alia, the model treaties adopted by the General Assembly and the Council of Europe; many nations were successfully employing those models as a basis for treaty negotiation. Several instances were cited in which the negotiation of treaties and conventions could have been greatly expedited had the Branch had the capacity to offer prompt technical assistance and advice on enabling legislation and implementation.

15. The Chairman summarized the initial reactions to the resolutions of the Congress as positive and noted that a good deal of training in the development of treaties was already being undertaken and that the models were being widely used. He also noted that there had not been enough time since the Congress for a complete evaluation of the implementation of its decisions. One expert emphasized the crucial need of developing countries for United Nations assistance in the drafting and development of treaties. The case was cited of years of delay in implementing recommendations for a bilateral drug treaty simply because of a lack of technical expertise in the drafting and formulation of treaties. The view was expressed that the United Nations should provide that type of service to secure implementation of its resolutions and model treaties by countries that had the political will to do so but lacked some of the necessary expertise. It was specifically recommended that the delivery of such services should be a focal point of the Expert Group's recommendations to the forthcoming intergovernmental working group on the creation of an effective United Nations crime prevention and criminal justice programme, established under General Assembly resolution 45/108. With further regard to treaties, the problems surrounding the optional freezing/forfeiture protocol to the model treaty on mutual assistance were commented on and the Chairman recommended further study to resolve those problems. It was, however, noted that the Council of Europe had recently elaborated a treaty on that subject.

16. Concern was voiced that treaties, even when based on United Nations models, should not be viewed as the sole or dominant method of cooperation between States. The demonstrated usefulness of inter-ministerial cooperation in subregional councils was cited as an alternative, which could be speedier and more flexible in some situations. The Model Treaty on the Transfer of Proceedings in Criminal Matters (General Assembly resolution 45/118, annex) and the Model Treaty on the Transfer of Supervision of Offenders Conditionally

Sentenced or Conditionally Released (General Assembly resolution 45/119, annex) were also discussed. An explanation was given of the scheme in force in Genmany and note was taken of the progress made by the Netherlands and the central European nations in that regard. Transfers of proceedings in Europe, principally in traffic matters, were currently estimated at 10,000 annually, rendering an immense service to travellers and their families.

17. Repeated references were made to the inescapable relationship between practical implementation of Congress resolutions and the resources available to the Secretariat, particularly in the area of technical assistance. It was deemed important for the intergovernmental working group to be aware that the leadership of both the United Nations and Member States must display a significant political commitment of will and resources in order to check or reduce the incidence and damaging effects of transnational crime.

18. Participants concurred that there was an apparent discrepancy in priorities between, on the one hand, decision-makers who attended the meetings of the Committee on Crime Prevention and Control and the United Nations congresses on the prevention of crime and the treatment of offenders and, on the other hand, those who attended other United Nations meetings, including those of the Economic and Social Council and the General Assembly and, most importantly, those of the Fifth Committee dealing with allocations to programmes from the United Nations budget. While the former accurately expressed global needs, priorities and concerns with respect to crime, the latter, who were making the crucial decisions that determined the central priorities of the United Nations as a whole, appeared to follow a different direction. It was deemed extremely important to draw attention to the apparent discrepancy and to seek ways, both nationally, through inter-ministry consultations and internationally, to eliminate it.

19. Some concern was expressed that Governments should be more involved in the development of the criminal justice programme. It was noted that the programme was directed by resolutions, some of which had first been moved at the United Nations congresses on the prevention of crime and the treatment of offenders without having been scrutinized in the preparatory process. As a result, additions had been made to the programme that had not been adequately considered by Governments. It was suggested that the recommendation be made to the intergovernmental working group that persons charged with developing national policy on relevant United Nations resolutions should be criminal justice professionals, who would subsequently share the responsibility within their Governments for implementing those resolutions. The additional problem of ensuring that Congress resolutions were translated and disseminated in languages other than the six official languages of the United Nations was conceded to be substantial. Once again, it was felt that greater involvement of Governments in the development and implementation of resolutions should allow greater access to governmental resources for translation and dissemination.

20. Using a phrase emphasized by the Under-Secretary-General, Director-General of the United Nations Office at Vienna, in her remarks, the suggestion was made that the experts recommend that in the future the Secretariat engage in an "outreach" to developing countries to reduce the gap between resolutions and their implementation.

21. Resolution 15, adopted at the Eighth Congress, 1/ in which the proposal was made for the compilation of a register of individual judicial sentences

imposed in respect of offences with a transnational component, was examined and found to be worthy of further study. In particular, coordination should be established with ICPO/Interpol with the possibility that, among other things, it might include in its yearly reports statistical data on transnational, as well as on organized crime. Reference was made to the International Seminar on Organized Crime to be held at Suzdal from 21 to 25 October 1991 as further concrete implementation of Congress resolutions calling for action against such crime. In discussing the implementation of General Assembly resolution 45/108, a number of experts said that they either would be or expected to be representatives of their respective Governments at the meetings of the forthcoming intergovernmental working group, and that they would welcome the views of the other experts as part of their preparatory work. As a consequence, the experts decided to convene an informal meeting chaired by an expert already nominated as his Government's representative.

B. Practical cooperative strategies and policies at the subregional, regional and international levels

22. In spite of the usefulness and importance of the model treaties adopted by the General Assembly on the recommendation of the Congress (resolutions 45/116, 45/117, 45/118 and 45/119), participants expressed the view that cooperation should not be solely bilateral. The model treaties were, of course, intended as prototypes to be used by Governments in their bilateral negotiations, but they should be seen to provide a sound basis for further development with a view to concluding regional agreements. It was stressed that regional cooperation should be developed further, since it appeared to be a promising preamble to the achievement of international cooperation. It was suggested that serious thought be given to the possibility of establishing regional institutions, perhaps at the ministerial level (for example ministerial councils), and holding regional ministerial meetings at regular intervals. For technical assistance, it was suggested that regional advisers be appointed to assist the Interregional Adviser, who was currently overwhelmed by the many requests for advisory services.

23. One expert, who had been a member of the drafting group that had worked on the addendum 2/ to the report to the Economic and Social Council of the Committee on Crime Prevention and Control on its eleventh session, on the need for the creation of an effective international crime and justice programme, outlined the history of that report. Alternative methods of structuring the United Nations programme to achieve practical cooperative strategies and policies were discussed, including new elements such as a world foundation on crime prevention and assistance to victims of transnational crime to raise extrabudgetary funds and secure greater governmental participation, perhaps through a commission of the Economic and Social Council; that might reduce the need for preparatory meetings and make resources available for operational purposes. Whether such changes were to be brought about by a convention or some other instrument was felt to be of secondary importance to the urgent need to respond more effectively to transnational criminality.

24. The semantic vagueness of the terms "organized" and "transnational" crime were noted, and the suggestions made that drug offences should not be equated with organized crime and that the expression crime "with transnational aspects" was broader and more meaningful than "transnational" crime.

25. Recent work by the Council of Europe on criminal justice matters was described, as were the recent discussions of a Freiburg workshop organized by the Max Planck Institute. The Chairman acknowledged with appreciation the contribution of the experts who had participated in that meeting and of the United Nations and the regional institutes for the prevention of crime and the treatment of offenders.

26. The role of ICPO/Interpol in relation to the United Nations crime prevention and criminal justice programme was examined, and the possibilities of cooperative and complementary training programmes, data collection and analyses of training needs were endorsed.

27. The difficulty in obtaining extrabudgetary funds and resources was considered, particularly when the programme's natural constituency was with justice and interior ministries, while foreign ministries as a rule controlled the funds available for technical cooperation and development. In view of those difficulties, it was specifically requested that the Group's recommendations include an endorsement of extrabudgetary fund-raising for the programme.

28. Mr. Igor Matiasovsky, Head of the Antinarcotics Department of the Slovak Police Force Headquarters, noted the manner in which transnational criminals exploited the concepts of national sovereignty and territoriality. He drew attention to the inadequate legal tools available to the authorities in Czechoslovakia, which would make it difficult to observe treaty obligations even if model treaties could be adopted, underscoring the necessity for the maximum extension of cooperative assistance by the United Nations, ICPO/Interpol and the community of nations.

C. Other modalities of international cooperation

29. The specific modality of an international criminal court in the Caribbean was reported on; attention was drawn to a promising proposal initiated after the Eighth Congress, which was currently being developed as an interministerial working group of the Caribbean Community (CARICOM). An additional suggestion was advanced that certain manifestations of organized crime and drug trafficking should be penalized as crimes against humanity. Under the theory of universal jurisdiction, any nation would then be able to punish such offenders, no matter where the offence had been committed. The efforts in the European Community and Council of Europe to establish regional jurisdiction were favourably remarked upon, as well as the work of the International Association of Penal Law in that area. It was agreed that, despite the slow pace of the International Law Commission, efforts should be made by the United Nations crime prevention and criminal justice programme to establish formal liaison with that body and bring to its attention in a systematic way the practical projects in place and being developed throughout the world.

30. The need to stress prevention as an important modality was emphasized, particularly through training available from the United Nations, the regional institutes on the prevention of crime and the treatment of offenders and the police.

31. The Interregional Adviser reported on the needs of developing countries for technical assistance and on the organizational and budgetary relationship of the crime programme with the United Nations Development Programme (UNDP) and the Department of Technical Co-operation of the United Nations Secretariat.

It was noted that large sums were dedicated to crime-related projects executed by other agencies, but no technical cooperation funds were regularly allocated to crime prevention and criminal justice except for support of the Inter-regional Adviser.

32. The Director of the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders reported that the Institute would be unable to direct its attention to organized crime in his region, as it lacked the technical capability to research the subject. Other problems might prevent effective corruption research. He did note the problem of sub-standard prisons in the region, which were filled with petty drug criminals living in inhumane conditions.

33. The President of the Arab Security Studies and Training Centre (ASSTC) reported upon the Centre's successful training programmes and provided valuable information on the demand generated by such training, which had led countries and funding agencies to contribute to the Centre's funding. The concept of a specialized agency, the need for scholarship and independent training and technical assistance capacities, and other new initiatives, including international support, were all considered worthy of specific mention and exploration.

34. Reference was made to other modalities of international cooperation mentioned in various reports and documentation submitted to the experts, all of which were to be considered by the drafting group and reflected in the recommendations of the meeting.

IV. ADOPTION OF THE REPORT

35. At the final meeting, the draft report was adopted.

Notes

1/ Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. C.

2/ Official Records of the Economic and Social Council, 1990, Supplement No. 1 A (E/1990/3/Add.1).

Annex I

MODEL DECREE FOR THE CONFISCATION OF CRIMINAL PROCEEDS

Introduction

1. Modern strategies against organized crime are based, inter alia, on the punishability of money laundering and the possibility of confiscating the proceeds of crime.

2. Regarding the means of investigation, judicial authorities are now in a position, by following the so-called "paper-trail" through the different bank accounts, to trace the identity of the perpetrators of a crime or to discover the proceeds of crime.

3. Furthermore, recent legal international instruments have created considerably better conditions for mutual assistance between the authorities of different countries (the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, a/ the Convention of the Council of Europe on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, of 8 November 1990, and the Model Treaty on Mutual Assistance in Criminal Matters (General Assembly resolution 45/117 of 18 December 1990)), and for cooperation between penal authorities and the banking and financial systems (see the Basle code of conduct of 18 December 1989, and to the 40 recommendations of the Financial Action Task Force on money laundering of February 1990).

4. Consequently, it becomes necessary to improve the technical means to be used by the investigating authorities, in order to translate into practice the provisions of those international instruments. The present proposed model decree, for inquiries by banks and financial institutions, aims at effectively seizing the proceeds of crime and obtaining all the connected documents.

5. Through its acceptance and dissemination nationally and internationally, law enforcement and judicial authorities, as well as the central banks of different countries, would begin to familiarize themselves with the use of such a model, which could be adapted to specific cases, according to changing needs and circumstances.

6. This would facilitate the relationship between the law enforcement and judicial authorities of different countries, as well as the working arrangements with the banking and financial systems.

I. SCOPE OF THE DECREE REGARDING THE PRODUCTION OF DOCUMENTS AND CONFISCATION OF PROCEEDS

7. Drawing on the relevant provisions of the United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances a/ and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, the text of the decree should contain the following clarification of its scope:

> "The present decree applies to assets or property of whatever nature, corporal or incorporal, movable or immovable, tangible or

intangible, as well as legal deeds or any other documents that incorporate the rights to such assets or property, in particular:

"(a) Cash, in any currency;

"(b) Precious metals and precious stones;

"(c) Titles incorporating real rights and/or extending to movable or immovable assets;

"(d) Titles negotiable inside or outside stock exchanges or other established financial markets, in particular shares, stocks, bonds, financial investments, trusts or similar obligations;

"(e) Any other means of payment, including, in particular, cheques, bills of exchange, money orders and so forth;

"(f) Property titles or participation titles of legal persons in whatever form or nature, in particular, titles regarding property rights, or the control of establishments, trusts, foundations, commercial companies and so forth;

"(g) Contracts, in particular concerning options, commodities, precious metals and futures;

"(h) Deposit certificates, treasury notes, treasury bills, bank booklets and so forth."

II. NATURE OF THE BANKING RELATIONSHIP THAT IS THE OBJECT OF THE CONFISCATION DECREE

8. The decree addressed by a judicial authority to a bank or financial institution should specify that such decree and/or requests for documents refer to assets or property falling under the categories listed above, regardless of the way by which they came into the possession of the banking or financial institution. In fact, the relationship that can be established between the client and the bank or financial institution may vary depending on the nature of the possible contracts. The situation in which, owing to an incomplete enumeration, the receiving bank omits to apply the decree to assets that are in fact the ones being sought should, therefore, be avoided. For this reason, the decree should begin by specifying that a general formulation be used to the effect that all possible assets are included, regardless of the form of the relationship that exists between the client and the receiving institution. This should be followed by an indicative and non-exhaustive enumeration of the most common forms of deposits or accounts. The following is a possible formulation along the lines mentioned above:

"The present decree extends to all existing assets in the possession of the receiving banking or financial institution, regardless of the legal nature of the relationship between the client and such institution, in particular all existing assets in the following forms:

"(a) In an account, regardless of its appellation (current account, deposit account, investment account, savings account and so

forth) and of whether such account is still open, or already closed, or identified only by means of a number, code or invented name, and irrespective of whether it is a transitory account or whether it exists in the form of a sub-account;

"(b) In the form of accounts of the bank or financial institution itself or other banking or financial institutions controlled by it, particularly under the appellation of 'our account' or 'different account' or other such accounts;

"(c) In the form of a deposit booklet, nominative booklet, or to the bearer booklet, regardless of appellation (in particular, savings booklets, investment booklets and others);

"(d) In safes or safe deposit boxes made available by the bank to its clients."

III. LISTS OF REQUESTED DOCUMENTS

9. In response to the decree issued by the law enforcement or judicial authority, the documents requested from the banking or financial institution shall be as complete as possible. What must be avoided is a partial transmission, a frequent occurrence nowadays. Usually, the receiving institution limits its response to sending the annual bank statements, from which it is only possible to make deductions regarding the general movement of an account. These statements, however, are of only limited value for a criminal investigation. For example, they often fail to mention the identity of the persons who have given the instructions to the bank, or the identity of the beneficiary, or the reasons for the different transactions mentioned in the bank statements.

10. The statements should therefore be accompanied by additional documents justifying every single transaction. For this reason, the decree should contain specific requests, drawing on the following elements:

"The banking or financial institution must provide to the judicial authority all documents concerning the assets or property that are the object of the decree, as well as all documents concerning the accounts and relationships that are the object of the decree, in particular:

"(a) The documents establishing the relationship or account with the receiving institution, in particular the signature cards of all those vested with the power of signature (signature card and opening account documentation);

"(b) The documents that contain the complete and true identity, address and employment of every person vested with the power of signature and each beneficiary/owner of the account;

"(c) The power of attorney and every other document authorizing persons other than those named as account owners to effect transactions in the account;

"(d) The periodic account statements (monthly, quarterly, annual or otherwise) that reflect all the transactions in the account during or pertaining to the period from the beginning of the illicit activities to the present day;

"(e) The documents justifying and reflecting the operations (in particular deposits, wire transfers, debits, withdrawals and deposits effected in cash or in any other form), for example deposit receipts or slips, memoranda of credit or debit, withdrawal slips and similar supporting documents;

"(f) All documents reflecting the identity of the persons who, either directly or through intermediaries, ultimately received funds from the incriminated accounts and/or from connected accounts;

"(g) Written instructions (instructions on payments or transfers) and annotations regarding the instructions of the client, the correspondence to, from, or on behalf of, the account holder(s) (letters, telegrams, telexes, telefaxes and telephone messages, telephone logs, memoranda, notes of phone conversations), as well as the minutes relating to the contents of conversations with the client;

"(h) The deeds of pledges, the contracts of the constitution of block accounts (escrow agreements) etc.;

"(i) Deposit certificates;

"(j) Letters of credit, standby letters of credit and so forth;

"(k) The cheques (front and back) and all similar means of payment and documents relating to these means of payment, and to their collection."

IV. CONCLUSION

11. A standardized model decree for the confiscation of proceeds and the production of documents to be used by law enforcement and judicial authorities worldwide would constitute one of the main instruments for an effective strategy against organized crime and money laundering.

12. The decree should therefore be as clear and complete as possible, and be adapted to the changing requirements of the banking and financial world.

13. The model could be divided into two parts: a general part, which would contain the sections and clauses that are considered absolutely necessary to comply with the relevant provisions of existing international instruments; and a second part, which would contain the elements that are specific for each case and each country (for instance, mentioning the penalties in case of false or incomplete replies or the prohibition forbidding the receiving bank to alert its customers who are mentioned in the decree).

14. The use of such a model decree would also be helpful in implementing the recommendations of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, b/ particularly those related to the fight against organized crime.

Notes

a/ United Nations publication, Sales No. E.91.XI.6.

b/ Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990 (United Nations publication, Sales No. E.91.IV.2), chap. I.

Annex II

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